

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RALPH STORY)	
Claimant)	
VS.)	
)	
STUTZMAN GREENHOUSE, INC.)	Docket No. 214,070
Respondent)	
AND)	
)	
WAUSAU)	
Insurance Carrier)	

ORDER

This order addresses two separate appeals. In the first appeal, claimant seeks review of the post-award Order dated March 8, 1999, that denied his request for the payment of medical bills. In the second appeal, the respondent and its insurance carrier seek review of the post-award Order dated March 15, 1999, awarding claimant \$350 in attorney fees. Both orders were entered by Administrative Law Judge Bruce E. Moore. The Appeals Board heard oral argument on September 21, 1999.

APPEARANCES

Robert R. Lee of Wichita, Kansas, appeared for the claimant. Larry Shoaf of Wichita, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record consists of the transcript of the hearing held before Judge Moore on March 4, 1999; the transcript from the settlement hearing held on October 9, 1997; and the transcript from the preliminary hearing held on September 5, 1996.

ISSUES

This is a claim for a series of accidents and mini-traumas to the low back that occurred from July 29, 1994, through February 29, 1996. At a settlement hearing held October 9, 1997, the parties settled the claim for a lump sum payment and respondent agreed to pay all outstanding medical bills from the authorized physicians. At that hearing,

the parties did not specifically address the outstanding medical bills from Dr. Michael P. Estivo and the rehabilitation center that the doctor used to obtain a functional capacities evaluation.

When the respondent and its insurance carrier refused to pay those outstanding medical bills after the settlement hearing, the claimant requested a hearing. After conducting a hearing on March 4, 1999, Judge Moore denied claimant's request for payment of the bills as authorized but awarded claimant \$350 in attorney fees.

Claimant contends the Judge erred by (1) denying the request for payment of the medical bills and (2) awarding him only \$350 in attorney fees. Claimant argues that the bills should be considered as being authorized and, therefore, payable under the terms of the settlement agreement. Additionally, claimant argues that the Judge should have awarded him \$750 in attorney fees in this post-award matter.

Conversely, the respondent and its insurance carrier contend the Judge erred by awarding claimant any attorney fees. They argue that attorney fees should not be awarded in this matter.

The issues before the Appeals Board on these appeals are:

1. Are the two outstanding medical bills payable under the terms of the settlement hearing award?
2. Is claimant entitled to an award of attorney fees for services rendered before the Judge and the Appeals Board?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. The parties settled this claim by agreement at an October 9, 1997 settlement hearing in which the Judge approved the terms of settlement and incorporated them into an award. As part of the award, Stutzman Greenhouse and Wausau Insurance Company agreed to pay all medical bills that had been incurred with authorized physicians. When reciting the terms of settlement, counsel stated:

Mr. Shoaf: . . . And furthermore, respondent agrees to pay for all medical bills from authorized physicians related to this accident for any dates of service up to today's date, and none otherwise.

Mr. Lee: And I assume any unauthorized medical if it exists, which we're not aware of any at this time.

2. Although neither counsel mentioned it at the time of the settlement hearing, there were two outstanding medical bills that Mr. Story had incurred for treatment of the back injury that was alleged in this claim. The first was a \$640 bill for a functional capacity evaluation at the Wichita Orthopedic Rehabilitation Center and the second was a \$399.50 bill for treatment from Dr. Michael P. Estivo. At no time did either Stutzman Greenhouse or its insurance carrier authorize either of those health care providers for treatment.

3. Realizing that the above bills had not been paid, in December 1998 Mr. Story requested a hearing to address their payment, which was held before Judge Moore on March 4, 1999.

CONCLUSIONS OF LAW

1. Mr. Story requests the outstanding medical bills identified above be paid under the terms of the October 1997 settlement hearing award. Therefore, the request for payment is in the nature of a post-award proceeding to enforce the terms of an award.

2. Considering the terms of the settlement hearing award, the Appeals Board concludes that Stutzman Greenhouse and its insurance carrier are not required to pay the medical bills in question. At the settlement hearing Stutzman Greenhouse and its insurance carrier agreed to pay only those medical bills incurred with authorized physicians. And neither outstanding bill is from an authorized physician or other health care provider.

3. Mr. Story argues that the two medical bills represent authorized medical treatment because they were incurred after the company knew that he was experiencing low back symptoms and that he needed treatment. The Appeals Board disagrees. The Workers Compensation Act makes an employer liable for all the medical bills that a worker incurs after the employer learns of a work-related injury but refuses or neglects to provide treatment.¹ Although an employer may be responsible for those bills, that treatment is not authorized in the sense that the employer approved of or appointed the health care provider.

4. Because Stutzman Greenhouse and its insurance carrier did not agree to pay the bills from Wichita Orthopedic Rehabilitation Center or Dr. Estivo, and because neither was incurred with an authorized provider, those bills are not payable under the terms of the settlement hearing award as authorized medical treatment. But the bills may be payable to the extent that there remains any unauthorized medical benefits.²

¹ K.S.A. 44-510(b).

² K.S.A. 44-510(c)(2).

5. The Workers Compensation Act provides that workers may be awarded attorney fees for the post-award services rendered by their attorney.³ Mr. Story's attorney requests compensation for six hours of work performed at the administrative law judge level and three hours of work for this appeal. Judge Moore found that \$350 was an appropriate fee for the services rendered before him and the Appeals Board agrees. Considering that the record fails to disclose evidence that another hourly rate would be more appropriate, noting the issues involved in this post-award matter, and noting the outcome, the Appeals Board uses the same approximate hourly rate utilized by Judge Moore and finds that Mr. Story is entitled to receive an additional \$175 for the services rendered in this appeal.

WHEREFORE, the Appeals Board affirms both the Order dated March 8, 1999, that denies Mr. Story's request for payment of the two outstanding medical bills and the Order dated March 15, 1999, that awarded Mr. Story \$350 in attorney fees. Further, the Appeals Board awards Mr. Story an additional \$175 in attorney fees for the services rendered in this appeal. The administrative and transcript costs associated with this proceeding are assessed against Stutzman Greenhouse and its insurance carrier.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Larry Shoaf, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 44-536(g).